HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Appeal From Order No. 298 of 2005

Date of Decision : 1st December, 2006

A.F.R. (Approved for reporting)

_____

~~Not approved for reporting~~

Date : 01.12.2006 Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal From Order No. 298 of 2005

United India Insurance Company Limited
Through its Divisional Manager
Divisional Office, Nainital Road
Haldwani, District Nainital ... Appellant

Versus

1. Bal Kishan S/o Late Sri Jasoud Ram

2. Ghanshyam S/o Bal Kishan

3. Deewan Singh S/o Late Bal Kishan
All R/o Beri Parav, Durgapal, Lalkuan,
District – Nainital

4. Intane Hasan S/o Hasan Khan
R/o Village Padaratpur
T.N. Nagar, Bareilly ... Respondents

Shri Manish Dalakoti, Advocate on behalf of Mr. D.S. Patni, learned counsel for the appellant.
Sri Zafar Ullah Siddiquie, learned counsel for the respondent Nos. 1 to 3.
None for respondent No. 4.

JUDGMENT

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 04.03.2005 passed by the Motor Accident Claim Tribunal/Additional District Judge/First Fast Track Court, Haldwani, Nainital in M.A.C. Case No. 199 of 2004 whereby the claim of the claimants was allowed for an amount of compensation to the tune of Rs. 3,67,000/- and the appellant-United India Insurance Company Limited has been directed to pay the same.

2. Sri Bal Kishan, husband of the deceased-Durga Devi and his two sons namely Ghanshyam and Diwan Singh had filed a claim petition for compensation of Rs. 6,90,000/- before the Tribunal alleging therein that on 10.07.2004 at about 3:45 p.m. when the deceased-Durga Devi was going on three wheeler bearing No. U.A.04A-1394 to Lal Kuaon, tyre of the offending truck bearing No. D.L.-1-G-A-2281, which was coming from opposite direction rashly and negligently, burst and it went to wrong side overturning upon the three wheeler resulting in death of all the occupants including Durga Devi. It was further pleaded in the claim petition that the deceased-Durga Devi was 39 years old and she used to earn more than 4,000/- p.m. by selling vegetables. It was further pleaded that the husband of the deceased was suffering from chronic disease and the deceased-Durga Devi was the only bread earner in the family.

3. The respondents contested the claim petition and filed their separate written statement. In the written statement of the respondent No.1/appellant, it was pleaded that the accident occurred due to the overturning of the three wheeler. The respondent No.1/appellant also pleaded that the conditions of the policy were violated by the owner/driver of the vehicle. The respondent No. 2 (respondent No. 4 in the appeal), owner of the vehicle had pleaded in his written statement that the vehicle became unbalanced and the tyre burst while the truck was in motion and turned turtle on the three wheeler causing grievous injuries to the passengers sitting on the three wheeler resulting in death of all the passengers including the deceased-Durga Devi. It is also pleaded that the truck was insured with the United India Insurance Company Limited at the time of accident and the

driver of the offending truck had a valid license at the time of accident.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the necessary issues.

5. After recording the evidence and hearing the parties, the learned Tribunal held that the deceased-Durga Devi died on account of the injuries sustained by her in the motor accident on 10.07.2004 and the accident occurred due to the rash and negligent driving of the driver of the offending truck. Therefore, the owner and the insurance company were liable to pay the compensation to the claimants. Relying upon the evidence led by the claimants, the Tribunal assessed the income of the deceased Rs. 36,000/- per annum. After deducting 1/3 of the said amount, the dependency was assessed as Rs. 24,000/-. The age of the deceased-Durga Devi was assessed by the Tribunal 45 years at the time of the accident. Considering the age of the deceased and the claimants, the Tribunal selected the multiplier of 15. By multiplying the annual dependency of Rs. 24,000/- to 15, the compensation worked out to Rs. 3,60,000/-. The Tribunal further awarded Rs. 5,000/- for the loss of consortium and Rs. 2,000/- towards funeral expenses. Thus, the total amount of Rs. 3,67,000/- was awarded as compensation to the claimants in the motor accident. It was further directed that if the United India Insurance Company Limited/appellant fails to pay the compensation within a period of month, it shall pay interest @ 9% from the date of claim petition till the payment.

6. Feeling aggrieved by the judgment and award, the United Insurance Company Limited/appellant has filed this appeal.

7. Heard Shri Manish Dalakoti, Advocate on behalf of Shri D.S. Patni, learned counsel for the appellant; Sri Zafar Ullah Siddiquie, learned counsel for the respondent Nos. 1 to 3 and perused the record.

8. The respondent/claimants had filed Cross Objection No. 5281 of 2005 in the appeal in question and prayed that the compensation awarded by the Tribunal be enhanced from 3,67,000/- to 6,90,000/-.

9. Learned counsel for the appellant contended that the Tribunal has erred in assessing the income of the deceased as Rs. 3,000/- p.m. and selecting the higher multiplier of 15 and thereby awarding the excessive compensation of Rs. 3,60,000/- to the claimants. Learned counsel for the respondents refuted the contention and contended that the Tribunal had erred in not taking into consideration the evidence of the claimants by which the claimants had proved the income of the deceased was more than 4,000/- p.m. It was further contended that the learned Tribunal fell in error in selecting the lower multiplier of 15 and the higher multiplier should have been selected by the Tribunal according to the IInd Schedule of 163 A. It was further contended that the learned Tribunal had granted the interest on the lower side also.

10. Learned Tribunal had held that the deceased-Durga Devi died on account of the injuries sustained by her in the motor

accident occurred on 10.07.2004 and the driver of the offending truck was responsible for the accident. The owner of the offending truck had pleaded in his written statement that the accident occurred due to the burst of the tyre of the truck while the truck was in motion and the truck was insured with the Insurance Company. We, therefore, do not find any infirmity in the above findings recorded by the Tribunal. As the accident occurred due to the rash and negligent driving of the offending truck, the Tribunal had rightly held the owner and the Insurance Company were liable to pay the compensation to the claimants.

11. The Hon'ble Apex Court in **Kaushnuma Begum and others Vs. New India Assurance Co. Ltd. and others, 2001 (1) T.A.C. 649 (S.C.),** assessed the compensation of Rs. 1,80,000/- and directed the Insurance Company to pay the said amount. It was held by the Apex Court in Kaushnuma Begum (Supra) that "*even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the persons who suffered on account of such accident? This question depends upon how far the Rule in* ***Rylands V. Fletcher*** *can apply in motor accident cases. The said Rule is summarized by Blackburn, J. thus:*

> *"The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's*

default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

12. The manner in which the offending truck is said to have turned turtle on the three wheeler, does not leave any room of doubt of the negligent of the driver of the offending truck which led to the accident resulting into the death of the several occupants of the three wheeler including the Durga Devi.

13. In motor accident claim petitions, the just and proper compensation should be awarded by the Tribunal. The just and proper compensation depends upon the facts and circumstances of each case. The Hon'ble Supreme Court in **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya reported in J.T. 2005 (4) SC 531** has held that:-

"8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as

regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master since there are so often many imponderables. In every case it is the overall picture that matters, and the court must try to assess as best as it can the loss suffered."

14. The claimants had adduced the evidence that the deceased used to earn more than Rs. 4,000/- p.m. Bal Kishan-PW1, husband of the deceased had stated in his evidence that the deceased was a vegetable vendor and she was the bread earner of the family. The learned Tribunal had rightly held that the evidence of Bal Kishan-PW1 that the deceased was earning Rs. 4,000/- was not credible and cogent and had rightly assessed that the deceased-Durga Devi was a young lady of about 45 years of age and she would have been earning at least Rs. 100/- per day, i.e. Rs. 3,000/- per month. The Tribunal further assessed the dependency after deducting 1/3 of her personal expenses as Rs. 24,000/- per annum. The multiplier of 15 selected by the Tribunal was also just and proper. The compensation of Rs. 3,67,000/- assessed by the Tribunal after multiplying the annual dependency of Rs. 24,000/- per annum with the multiplier of 15, appears to be just and proper compensation in the facts and circumstances of the case. Thus we do not find any infirmity and illegality in the order passed by the Tribunal.

15. In view of the above facts and circumstances, we are in agreement with the findings and order passed by the learned

Tribunal. The appeal filed by the United India Insurance Company Ltd./appellant and cross objection filed by the claimants/respondent Nos.1 to 3 are liable to be dismissed.

16. Accordingly, the appeal filed against the impugned award dated 04.03.2005, passed in M.A.C. Case No. 199 of 2004 and cross objection No. 5281 of 2005 filed by the respondents/claimants are hereby dismissed.

17. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 1st December, 2006
Shiv